



IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. **76-1820**

JONATHAN W. BATTEN, *Petitioner*,
v.
STATE OF IOWA, *Respondent*.

On Appeal from the Supreme Court of Iowa

PETITION FOR WRIT OF CERTIORARI

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COMES Now Appellant and for his Petition for Writ
of Certiorari, states:

1. Attached hereto as Exhibit "A" and by this
reference incorporated herein is a copy of the opinion
of Iowa Supreme Court. The text is also reported in
full at 249 NW2nd, 865.

2. Jurisdiction hereof is invoked on the basis of 28 USC 1257 (2) and Articles 4, 5 and 14 of the United States Constitution giving this Court power to review the decision of the Iowa Supreme Court, entered February 16, 1977 and referred to in No. 1 above; (order withholding the procedendo ad penitentiarii for 60 days pending a decision on this petition was dated March 1977, and signed by Justice Le Grand of the Iowa Supreme Court).

3. This is a prosecution of an amended and substituted County Attorney's Information charging that the Defendant, Jonathan W. Batten, on or about the 8th day of June, 1974, in the County of Scott, State of Iowa, did conspire with one or more persons to deliver a controlled substance, to-wit: herein, in violation of Section 204.401 (a) of the 1973 Code of Iowa.

On June 6, 1975, the Defendant filed a Motion in Limine requesting that the trial court instruct the County Attorney not to mention or to refer to in any manner the fact that the Defendant had been convicted of prior felonies. The Motion in Limine was filed at 8:50 a.m.

The Defendant's trial commenced at 9:53 a.m. on June 9, 1975. After the selection of the jury, the Defendant, Jonathan W. Batten, orally amended his Motion in Limine to further request the trial court to instruct the County Attorney's Office to instruct its witnesses not to offer any testimony regarding any prior use or association which the Defendant, Jonathan W. Batten, may have had regarding drugs. At approximately 3:30 p.m. on June 6, 1975, the court orally instructed the County Attorney's Office to in-

struct its witnesses not to testify or voluntarily offer evidence with regard to the Defendant, Jonathan W. Batten's prior felony record or possible prior use of drugs.

During the testimony of the first witness for the State, the State's witness, a Miss Cox, in response to a question by the Assistant County Attorney, stated that she had used heroin a couple of times with the Defendant, Jonathan W. Batten. The Defendant, Jonathan W. Batten, through his attorney, immediately objected to the answer and made an immediate motion for a mistrial. The Court, out of the presence of the jury, discussed the motion for mistrial but reserved its ruling on the motion until the close of the State's evidence. At the close of the State's evidence, the Court overruled the Defendant's motion for a mistrial and noted the exceptions of the Defendant. The trial court noted that the Defendant would have an opportunity to deny the statement made by the State's witness with reference to prior use of drugs. The Court also overruled the Defendant's motion for a directed verdict at the close of the State's evidence.

Whereupon, the jury found the Defendant guilty as charged in the County Attorney's Amended and Substituted Information.

On June 24, 1975, the Defendant, Jonathan W. Batten, filed a Motion for a New Trial, requesting that the Court grant the Defendant a new trial for the reason that one of the State's witnesses directly violated the Court's ruling on the Defendant's Motion in Limine thereby causing extreme prejudice and depriving the Defendant of a fair and impartial trial. The Court overruled the Defendant's Motion for a

New Trial reserving exceptions to the Defendant. The Court then sentenced the Defendant to serve ten (10) years at the Men's Reformatory at Anamosa and to pay a fine in the amount of \$1,000.00.

On August 7, 1975, the Defendant, Jonathan W. Batten, filed his Notice of Appeal.

The Supreme Court with Chief Justice Moore and Justices LeGrand, Uhlenhopp and Harris favoring affirmation and Justices Mason, Rawlings, Reynoldson and McCormick favoring a reversal entered its decision on February 16, 1977, which by operation of law, pursuant to Section 684.10 of the Code of Iowa, affirmed the judgment of the trial court.

4. The issue of the Appellant's right to a fair and impartial jury as guaranteed by the United States Constitution was raised by the Defendant's motion for mistrial immediately after the prejudicial statements, at the Defendant's motion for a directed verdict, at the Defendant's motion for a new trial, at sentencing and on appeal to the Iowa Supreme Court. The Defendant's violation of his rights against self-incrimination were raised on appeal to the Iowa Supreme Court.

5. Certiorari should be granted for the Court to consider the following propositions:

a. That the Iowa Court should have granted Appellant's motion for a new trial because the extremely prejudicial statements of the State's witness destroyed the Defendant's constitutional right to a fair and impartial trial by jury after the Defendant had taken all possible precautions to avoid the prejudice.

b. That the Iowa Court's ruling which requires the Defendant to testify in order to eliminate the

obvious prejudice resulting from testimony improperly admitted after the Defendant has taken all possible precautions to have such testimony excluded from the minds of the jury violates the Defendant's constitutional right against self-incrimination.

CONCLUSION

WHEREFORE, Appellant prays that he be granted a Writ of Certiorari to this Court for the Court to determine and pass upon the merits of this cause and grant such relief as it shall see fit.

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APPENDIX

IN THE SUPREME COURT OF IOWA

370

58594

STATE OF IOWA, *Appellee*,

v.

JONATHAN W. BATTEN, *Appellant*.

(Filed February 16, 1977)

Appeal from Scott District Court—Lowell D. Phelps, Judge.

Defendant appeals from judgment following his conviction for conspiring to deliver a controlled substance in violation of § 204.401(a), The Code, 1973.

AFFIRMED by operation of law under § 684.10, The Code.

Loren Thomas Hora, of Davenport, for appellant.

Richard C. Turner, Attorney General, Lee M. Jackwig, Assistant Attorney General, and Edward N. Wehr, County Attorney, for appellee.

Considered en banc.

PER CURIAM:

On this appeal from a conviction and sentence for a violation of § 204.401(a), The Code, Chief Justice Moore and Justices LeGrand, Uhlenhopp and Harris favor affirming the judgment of the trial court. Justices Mason, Rawlings, Reynoldson and McCormick favor a reversal. Justice Rees takes no part.

As the court stands equally divided, the judgment is AFFIRMED by operation of law under § 684.10, The Code.